

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ST. LOUIS

SIXTH JUDICIAL DISTRICT

MINNESOTA POWER, an
ALLETE company, individually and as
agent for Duluth Steam District No. 2, and
DULUTH STEAM DISTRICT NO. 2

Court File No.: _____

Plaintiffs,

SUMMONS

v.

ENVIRONMENTAL SERVICES,
LTD and IAP, Inc.,

Defendants.

THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to answer the Complaint of the Plaintiffs in the above-entitled action, a copy of which Complaint is hereto attached and herewith served upon you, and to serve a copy of your Answer to said Complaint upon Plaintiff's attorney, James A. Wade, Johnson, Killen & Seiler, P.A., 800 Wells Fargo Building, 230 West Superior Street, Duluth, Minnesota 55802, within twenty (20) days after service of this Summons and said Complaint upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated this 5 day of May, 2008.

JOHNSON, KILLEN & SEILER, P.A.

By

JAMES A. WADE #113414
800 Wells Fargo Building
230 West Superior Street
Duluth, MN 55802
Telephone (218) 722-6331
Attorney for Plaintiffs

EXHIBIT

Tables

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COMPLAINT

Plaintiffs,

v.

ENVIRONMENTAL SERVICES,
LTD and IAP, INC.

Defendants.

Minnesota Power, an ALLETE company, for its complaint states and alleges as follows:

PARTIES

1. Plaintiff, Minnesota Power, an ALLETE corporation, is a Minnesota corporation with its principal place of business in Duluth, Minnesota.
2. Environmental Services, Ltd, on information and belief is a North Dakota corporation doing business in the State of Minnesota.
3. IAP, Inc. is a Wisconsin corporation doing business in the State of Minnesota.
4. The present cause of action relates to a contract entered into, performed and breached in St. Louis County, Minnesota.
5. On or about December 12, 2005, Plaintiff issued a request for quotation to Environmental Services, Ltd. for a project generally described as a #4 ID fan rotor and inlet cone replacement. Defendant Environmental Services, Ltd. and Defendant IAP individually

and/or jointly submitted a proposal to do the work on a #4 ID fan rotor and inlet cone replacement project for the sum of \$83,785.

6. In response to the quotation submitted by Defendants, purchase order 182291 was issued on or about December 12, 2005 and a revised purchase order 182291 was issued on or about February 21, 2006. By virtue of the bid documents, specifications, purchase orders and other contract documents, the Defendants contractually agreed to manufacture and furnish replacement fans rotors and inlet cones per the attached specification as more fully set out in purchase order 182291 with attached documents. The fan was delivered and installed on May 20, 2006.
7. Defendants warranted the fan to be merchantable and fit for its intended purpose.
8. On initial operation, the fan failed and Defendants attempted to cure the defects.
9. Plaintiff has afforded defendants ample opportunities to cure the defects but it has consistently failed to perform properly or as warranted.
10. The fan in question is defective and unfit for its intended purposes.
11. As a result of the defective and unfit nature of the fan and its failure to perform as warranted, Plaintiff has suffered damages including lost production and costs of repair and replacement.

COUNT I

BREACH OF CONTRACT

12. Plaintiff realleges and adopts the matters and things alleged in the foregoing paragraphs.
13. Defendants jointly and severally have breached their contract with Plaintiff causing Plaintiff to suffer damages in excess of \$50,000.

COUNT II

BREACH OF WARRANTY

14. Plaintiff realleges and adopts by reference the matters and things alleged in the preceding paragraphs.
15. Defendants expressly and implicitly warranted that the product would be merchantable, fit for its intended purpose and would perform to specifications.
16. Based on the fan's failure to perform as warranted, Plaintiff has suffered damages in excess of \$50,000.

COUNT II

NEGLIGENCE

17. Plaintiff realleges and adopts the matters and things alleged in the preceding paragraphs.
18. Defendants' design and construction of the #4 fan deviated from accepted standards of practice.
19. Defendants' deviation from accepted standards of practice directly and proximately caused Plaintiff to suffer damages.

WHEREFORE, the Plaintiff respectfully requests judgment in an amount in excess of \$50,000, together with reasonable costs, disbursements and other relief as the Court deems just and equitable.

Dated this 5th day of May, 2008.

JOHNSON, KILLEEN & SEILER, P.A.

By


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